

Message Text

MRN: 1974IAEA V000398 SEGMENT NUMBER: 000001 ERROR READING TEXT INDEX
FILE; TELEGRAM TEXT FOR THIS SEGMENT IS UNAVAILABLE
ADP000
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ACTION SCI-06

INFO OCT-01 IO-14 ISO-00 ACDA-19 CIAE-00 INR-10 L-03

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FM USMISSION IAEA VIENNA
TO SECSTATE WASHDC PRIORITY 3814
INFO AEC GERMANTOWN PRIORITY

UNCLAS SECTION 2 OF 2 IAEA VIENNA 0398

THAT RECIPIENT GOVERNMENT OR SOME OTHER ENTITY WOULD
EXERCISE ALL RESPONSIBILITIES ON BEHALF OF AGENCY.
SECRETARIAT NOTES THAT AGENCY ASSUMING TITLE (AND PASSING
IT IMMEDIATELY TO MEXICO) FOB COMMISSION FACILITY WITHIN
US CREATES POTENTIAL PROBLEMS SOMEWHAT ANALAGOUS
TO THOSE NOTED ABOVE, INCLUDING;

A. EXPORT FROM US: ATOMIC ENERGY ACT AND US-IAEA
BILATERAL, AS INTERPRETED IN PAST, HAVE REQUIRED THAT
NUCLEAR MATERIALS TO BE SUPPLIED THROUGH AGENCY THEORETICALLY
BE EXPORTED FROM US TO AGENCY, RATHER THAN TO COUNTRY OF
DESTINATION, AND THEN IN EFFECT BE "RE-EXPORTED" BY AGENCY
PURSUANT AGENCY-RECIPIENT BILATERAL PROJECT AGREEMENT.
IF AGENCY WERE TO ASSUME TITLE IN US WITH TITLE VESTING
IN RECIPIENT (IN THIS CASE, MEXICO) IMMEDIATELY THEREAFTER,
MATERIALS WOULD UPON EXPORT BE MEXICAN MATERIALS BEING
EXPORTED FROM US BY MEXICO TO MEXICO. AGENCY QUESTIONED
WHETHER ISSUANCE OF EXPORT LICENSE UNDER THESE CIRCUMSTANCES
FEASIBLE UNDER US LAW.

B. SAFEGUARDS: IF AGENCY TAKES TITLE FOB COMMISSION
FACILITY, TITLE CAN THEN PASS IMMEDIATELY TO MEXICO ONLY
PURSUANT TO PROJECT AGREEMENT, UNDER WHICH MATERIALS PROVIDED
BY AGENCY ARE REQUIRED TO BE SUBJECT TO AGENCY SAFEGUARDS.
PROBLEM WOULD EXIST ONLY THEORETICALLY IN CASES WHERE MATERIAL
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WAS TO BE IMMEDIATELY EXPORTED FROM US, BUT IN THIS CASE ENRICHED UF6 FOR LAGUNA VERDE WILL REMAIN IN US, FOR FABRICATION INTO FUEL ELEMENTS (BY GE). IN THEORY, SECRETARIAT FEELS THAT AGENCY SHOULD BE REQUIRED TO APPLY SAFEGUARDS TO MATERIAL REGARDLESS OF FACT THAT IT STILL IN US PLANT. THIS WOULD TEND TO IMPUTE CERTAIN MANDATORY CHARACTER TO AGENCY SAFEGUARDS IN CERTAIN US FACILITIES (I.E., THOSE HANDLING MATERIAL DESTINED FOR AGENCY PROJECTS IN FOREIGN COUNTRIES), WHICH US WOULD PREFER TO AVOID. PROBLEM WOULD BE GENERIC WITH ALL SIMILAR AGREEMENTS, AND SECRETARIAT WOULD GREATLY PREFER NOT HAVING TO FACE IT. COMMENT: MISSION FULLY AGREES. END COMMENT.

7. IN CONTRAST TO ABOVE PROBLEMS, AGENCY ASSUMING TITLE AT PORT OF EXPORT AND PASSING IT IMMEDIATELY TO RECIPIENT GOVERNMENT (MEXICO) WOULD GREATLY SIMPLIFY PROCESS. AGENCY WOULD ASSUME NO LIABILITIES THAT MIGHT CAUSE LEGAL HANGUPS OR PROBLEMS WITH BOARD APPROVAL OF AGREEMENTS. US REQUIREMENT FOR EXPORT FROM US TO AGENCY WOULD BE SATISFIED. AND AGENCY SAFEGUARDS WOULD APPLY TO MATERIAL, AS IS NOW CASE, ONLY OUTSIDE US. ONLY PROBLEM, WHICH SECRETARIAT ADMITS EXISTS, IS QUESTION OF WHO OWNS MATERIAL FROM TIME IT LEAVES COMMISSION FACILITY (I.E., WHEN AEC PREFERS TO RELINQUISH TITLE) AND TIME IT IS EXPORTED FROM US (I.E., WHEN AGENCY AND THEN RECIPIENT ASSUME TITLE). MISSION UNDERSTANDS (PER FRIEDMAN-GABBERT MEMO OF 11/28/73, DEALING WITH REVISED MASTER AGREEMENT FOR RESEARCH QUANTITIES OF MATERIAL) THAT US COMMERCIAL ENTERPRISES HIGHLY RELUCTANT TO TIE UP CAPITAL IN OWNING MATERIAL DURING FABRICATION. STEIN ADMITTED THAT MATTER OF WHO OWNED MATERIAL WITHIN US BETWEEN COMMISSION FACILITY AND PORT OF EXPORT WOULD NEED TO BE SETTLED IF HIS DRAFT APPROACH WERE TO BE WORKABLE.

8. AS REGARDS THIS PROBLEM, ONE TENTATIVE SOLUTION WHICH EMERGED FROM DISCUSSION MIGHT BE TO UTILIZE FACT THAT THERE IS NO RESTRICTION THAT WE OR AGENCY KNOW OF ON ANY FOREIGN GOVERNMENT OR CORPORATION HOLDING TITLE TO NUCLEAR MATERIALS WITHIN RPT WITHIN US; ONLY PROBLEM ARISES UPON EXPORT. IF MEXICO, IN THIS CASE, WERE TO TAKE TITLE TO MATERIAL FOB COMMISSION FACILITY, PAY FOR IT AS REQUIRED, AND HOLD TITLE DURING FABRICATION OR FOR SUCH OTHER TIME AS IT
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REMAINED IN US, WHEN IT CAME TIME TO EXPORT MATERIAL IT COULD LEGALLY BE EXPORTED FROM US (BY MEXICO) TO AGENCY, WITH TITLE VESTING AGAIN IN MEXICO IMMEDIATELY THEREAFTER, BUT ONLY SUBSEQUENT TO LEGAL DEPARTURE OF MATERIAL FROM US. WITH AGENCY INVOLVEMENT THUS POSTPONED TO LAST POSSIBLE POINT WITHIN US, PROBLEM OF SAFEGUARDS WOULD NOT ARISE, AND SINCE AGENCY TITLE WOULD STILL BE TRANSITORY,

CONTINGENT LIABILITY PROBLEM WOULD ALSO BE AVOIDED.

9. MISSION WOULD APPRECIATE DEPT/AEC COMMENTS ON ABOVE
OR OTHER POSSIBLE APPROACHES TO QUESTION OF WHERE AGENCY
TAKES TITLE, WHO HOLDS TITLE TO MATERIALS WITHIN US,
TO WHOM MATERIAL IS EXPORTED FROM US, AND HOW ANY APPEARANCE
OF SOME REQUIREMENT FOR APPLICATION OF AGENCY SAFEGUARDS
WITHIN US PURSUANT TO SUCH AGREEMENTS MAY BE AVOIDED.PORTER

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